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| PRE-APPEAL BRIEF REQUEST FOR REVIEW | | Docket Number (Optional) | |
|---|--|--------------------------|-------------|
| <p>I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]</p> <p>on <u>12-A-06</u></p> <p>Signature <u>[Signature]</u></p> <p>Typed or printed name <u>Carolyn I. Erickson</u></p> | | Application Number | Filed |
| | | 09/304,906 | May 4, 1999 |
| | | First Named Inventor | |
| | | Ralph E. Sipple et al. | |
| | | Art Unit | Examiner |
| | | 2623 | H. Tran |
| <p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <p><input type="checkbox"/> applicant/inventor.</p> <p><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</p> <p><input checked="" type="checkbox"/> attorney or agent of record. 25,645 Registration number _____</p> <p><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</p> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p> | | | |
| <p><input checked="" type="checkbox"/> *Total of <u>4</u> forms are submitted.</p> | | | |

[Signature]
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Dec 4, 2006
Date

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

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P A T E N T

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Ralph E. Sipple et al.

Serial No. : 09/304,906

Examiner: H. Tran

Filed : May 4, 1999

Group Art Unit: 2623

For : VIDEO SERVER

Docket No. : 33012/264/101

REASONS FOR PRE-APPEAL BRIEF REQUEST FOR REVIEW

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

CERTIFICATE UNDER 37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an enveloped addressed to the Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 4th day of December, 2006

By: [Signature]
Carolyn I. Erickson

Sir:

As is highlighted throughout the specification and drawings, it is critical to Applicants' invention to employ an overall video on demand system architecture which promotes efficiency and modularity. Efficiency is greatly enhanced by handling the input/output intensive video streaming function with one or more relatively simple video processors having a first hardware and software architecture, and assigning the remainder of the data processing functions to a relatively versatile and complex large scale computer having a different, second hardware and software architecture.

Claims 1-2, 4-6, 10-12, and 14-25 have been rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,790,176, issued to Craig (hereinafter referred to as "Craig"). This ground of rejection should be reversed for failure of Craig to meet the requirements of MPEP 2131 and for clear errors of law in the Examiner's

application of Craig to the rejected claims.

For Example, claim 1 is a Jepson-type independent apparatus claim having three major improvement elements. The first element is "a first processor having a first hardware architecture optimized to perform a variety of computational tasks which spools said requested video data in response to said request". In making his rejection, the Examiner states:

A 1st processor (350, 370 of Fig. 2, 3A or gateway 572 of Fig. 5) having a 1st hardware architecture optimized to perform a variety of computational task (sic), which spools the requested video data in response to the request (Col. 13, lines (sic) 45-Col. 14, lines (sic) 30); (emphasis added)

Thus, the Examiner has apparently found that each of elements 350, 370, and 572 separately and individually correspond to the claimed "first processor", because he has chosen the disjunctive "or" rather than the conjunctive "and". This issue has been previously indicated to the Examiner, but he has maintained his position in the final rejection indicating that this sentence construction is not a mere typographical error. This finding is clearly erroneous, because none of these three elements (i.e., 360, 370, or 572) has any "hardware architecture" disclosed by Craig, so none is taught to be "optimized to perform a variety of computational tasks" as claimed. Thus, the Examiner alleges inherency without any attempt to comply with MPEP 2112.

Even more apparent, none of elements 350, 370, or 572 "spools the requested video data" as claimed. Therefore, the Examiner provides an extensive citation (i.e., column 13, line 45, through column 14, line 30) which says nothing of the operation of element 572 and establishes that neither element 350 nor element 370 has anything to do with the claimed spooling function.

Concerning element 350, column 14, lines 21-23, of Craig states:
Interactive Processor 350 processes incoming commands from subscribers sites once a session is established by the Gateway. (Emphasis added)

"Once a session is established" can only occur after spooling has been

performed and streaming has begun.

Regarding element 370, Craig, column 14, lines 26-30, states:

The incoming data is interrogated for content and selectively forwarded to the appropriate module for processing: Session Manager 310 for Video-on-Demand and other retrieval applications and to Multi-Media Application Processor 370 for Multi-Media Application. (Emphasis added)

Thus, Multi-Media Application Processor 370 does not even receive incoming Video-on-Demand data. Therefore, none of the alternative elements of Craig (i.e., 350, 370, and 572) shows "the identical invention.....in as complete detail as is contained in the claim" as required by MPEP 2131.

The second claimed element is "a video server memory responsively coupled to said first processor in which said spooled requested video data is stored". In making his rejection, the Examiner cites Figs. 2 and, 3B, element 270. Neither of these Figures shows the claimed coupling to elements 350, 370 and 572 which are alleged by the Examiner to be the claimed "first processor". Furthermore, none of these three Figures teaches the claimed storage of the spooled requested video data. Therefore, none of these three Figures shows "the identical invention.....in as complete detail as is contained in the claim" as required by MPEP 2131.

The third claimed element is "a second processor having a second hardware architecture different from said first hardware architecture optimized to perform input/output operations responsively coupled to said video server memory and said subscriber receiver which accesses said spooled requested video data directly from said video server memory without passing through said first processor and streams said spooled requested video data to said plurality of subscriber receivers in a plurality of streams spaced apart by a predetermined time".

Again, the Examiner has apparently found alternative elements (i.e., elements 330 and 541) to meet the limitations of Applicants' claimed third element (i.e., "second processor"). However, Craig says nothing of the architectures of these two elements, so it cannot be

determined if they are optimized as claimed or if they are different from the claimed "first hardware architecture". Neither of these elements is even directly coupled to element 270 which the Examiner has found to be the claimed "video server memory". Apparently, the Examiner agrees in making the legally irrelevant statement:

....In response the Examiner respectfully disagrees with Applicant because Fig. 3A-B clearly discloses at least 1st processor 350/370 coupled to various memories within the system..... (emphasis added)

This statement is legally irrelevant, because it does not address Applicants' claimed limitation. Furthermore, neither of these elements is taught by Craig to "stream" the "spooled requested video data" to the subscriber as claimed. Therefore, the rejection of claim 1, and all claims depending therefrom, should be reversed for failure of Craig to meet the requirements of MPEP 2131 and for clear errors of law.

For the sake of brevity, many of the remaining pending claims are not addressed herein. However, it is significant that in addition to the errors made in examining claim 1, the Examiner adds further clear errors of law. In finally rejecting claim 6, for example, the Examiner admits that Craig does not meet the first claimed element. Instead, he makes the legally irrelevant statement:

It is noted Craig Fig. 1 shows ONLY a representative of the system.

In other words, the Examiner has rejected claim 6 upon what Craig admittedly has not disclosed. This is clear error of law. The last element of claim 6 is limited by "streams said spooled video program to said two subscribing television receivers as two separate spaced apart streams from said copy of said video program wherein said two separate spaced apart streams are spaced apart from each other by a time period which is greater than zero". This limitation is clearly not shown by Craig, so the Examiner has just ignores the limitation.

Similarly, claim 14 depends from claim 13 and further limits the claimed "video processing means". The Examiner admits that Craig does not anticipate claim 13 from which claim 14 depends. Therefore, Craig

does not anticipate claim 14, as a matter of law.

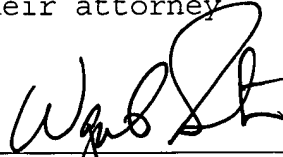
Respectfully submitted,

Ralph E. Sipple et al.

By their attorney

Date

Dec 4, 2006



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